

By: Mudra

S.B. 1241

A BILL TO BE ENTITLED

AN ACT

1 relating to financial arrangements between referring health  
2 care providers and providers of designated health services in  
3 rural areas; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

5 SECTION 1. Subtitle A, Title 3, Occupations Code is  
6 amended by adding Chapter 111 to read as follows:

7 CHAPTER 111. SELF-REFERRAL BY HEALTH CARE PROVIDERS

8 Sec. 111.001. SHORT TITLE. This chapter may be cited as  
9 the "Rural Access to Health Care Act."

10 Sec. 111.002. APPLICATION OF CHAPTER. This chapter  
11 applies only to an entity located in a county with a population  
12 of 50,000 or less.

13 Sec. 111.003. LEGISLATIVE FINDINGS. (a) It is recognized  
14 by the Legislature that the referral of a patient by a health  
15 care provider of designated health services in which the  
16 referring health care provider has an interest represents a  
17 potential conflict of interest.

18 (b) The Legislature finds these referral practices may  
19 limit or eliminate access to health care services in rural  
20 areas, may result in over-utilization of health care services,

1 may increase costs to the health care system, and may adversely  
2 affect the quality of health care.

3 (c) The Legislature also recognizes, however, that it may  
4 be necessary under certain market conditions for providers to  
5 own entities providing health care services, and to refer  
6 patients to such entities, as long as certain safeguards are  
7 present in the arrangement.

8 (d) It is the intent of the Legislature to provide  
9 guidance to health care providers regarding prohibited patient  
10 referrals between health care providers and entities providing  
11 health care services in rural communities and to protect the  
12 people of rural Texas from unnecessary and costly health care  
13 expenditures.

14 Sec. 111.004. DEFINITIONS. For the purpose of this  
15 chapter, the word, phrase, or term:

16 (1) "Designated health services" means:

- 17 (A) ambulatory surgery center services;
- 18 (B) clinical laboratory services;
- 19 (C) diagnostic imaging services;
- 20 (D) dialysis services;
- 21 (E) durable medical equipment and supplies;
- 22 (F) endoscopic services;
- 23 (G) electromyogram and other neurological testing;
- 24 (H) home health services;

1 (I) inpatient and outpatient hospital services  
2 (J) lithotripsy;  
3 (K) occupational therapy services;  
4 (L) outpatient prescription drugs;  
5 (M) parental and enteral nutrients, equipment and  
6 supplies;  
7 (N) physical rehabilitation and therapy services;  
8 (O) prosthetics, orthotics, and prosthetic devices  
9 and supplies;  
10 (P) radiation oncology and chemotherapy oncology  
11 services; and  
12 (Q) speech-language pathology services.

13 (2) "Diagnostic imaging services" means general  
14 radiography, magnetic resonance imaging, nuclear medicine,  
15 angiography, computed tomography, positron emission tomography,  
16 and ultrasound to include cardiac echo and obstetrical  
17 ultrasound.

18 (3) "Entity" means a sole proprietorship, partnership,  
19 corporation, foundation, trust, unincorporated association or  
20 other business entity.

21 (4) "Health care provider" means any individual or entity  
22 licensed as a health professional or authorized to practice in  
23 health care under Title 3, Subtitles B and C of this Code.

1       (5)       "Immediate family member" means a health care  
2 provider's spouse, child, child's spouse, grandchild,  
3 grandchild's spouse, parent, parent-in-law, or sibling.

4       (6)       "Investment interest" means an equity or debt security  
5 issued by an entity, including, without limitation, shares of  
6 stock in a corporation, units or other interests in a  
7 partnership, bonds, debentures, notes, or other equity interests  
8 or debt instruments; provided, however, that an investment  
9 interest in real property resulting in a landlord-tenant  
10 relationship between the health care provider and the entity in  
11 which the equity interest is held, unless the rent is  
12 determined, in whole or in part, by the business volume or  
13 profitability of the tenant or exceeds fair market value shall  
14 be excepted from this definition.

15       (7)       "Investor" means a person or entity owning a legal or  
16 beneficial ownership or investment interest, directly or  
17 indirectly, including, without limitation, through an immediate  
18 family member, trust, or another entity related to the investor  
19 within the meaning of 42 C.F.R. Section 413.17, in an entity.

20       (8)       "Licensing authority" means the department, board,  
21 office or other agency of the state that regulates health care  
22 providers that are subject to this chapter.

1       (9)     "Patient" means a person who receives a physical  
2 examination, evaluation, diagnosis, or treatment by a health  
3 care provider.

4       (10)    "Payor" means an entity, including a third party  
5 payor or other insurance company, a health maintenance  
6 organization or another organization that pays a health care  
7 provider to provide designated health services.

8       (11)    "Referral" means a request by a health care provider  
9 for, or ordering of, designated health care services for a  
10 patient. The term does not include the performance of a  
11 designated health service for a patient by a health care  
12 provider or an entity which provides or supplies the designated  
13 health service (i) under the direct supervision of the patient's  
14 health care provider; (ii) performed in the same building in  
15 which the patient's health care provider operates his or her  
16 medical practice; and (iii) where the performance or supply of  
17 the designated health service results in a total financial cost  
18 to the patient or the patient's payor or third party payor of no  
19 more than \$250 per year per patient.

20       (12)    "Third party payor" means:

21           (A)   a company authorized to engage in business  
22 involving the payment of money or another thing of value in the  
23 event of loss resulting from disability incurred as a result of  
24 sickness or ill health, as defined in the Insurance Code;

1 (B) a health insurance plan offered by an employer  
2 under the provisions of the Employee Retirement and Insurance  
3 Security Act of 1974; or

4 (C) a publicly funded program of health care  
5 services, including but not limited to Medicaid or the  
6 Children's Health Insurance Program.

7 Sec. 111.005. PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.

8 (a) A health care provider may not refer a patient for the  
9 provision of designated health services to an entity:

10 (1) in which the health care provider or the health  
11 care provider's immediate family member is directly or  
12 indirectly an investor or has an investment interest; and

13 (2) which is located within a 30-mile radius of a  
14 hospital which is:

15 (i) located in a county with a population of  
16 50,000 or less; or

17 (ii) designated as a critical access hospital  
18 under the authority of and in compliance with 42 U.S.C. Section  
19 1395i-4; or

20 (iii) designated as a sole community hospital under the authority of and in compliance with 42 U.S.C. Section  
21 1395ww(d)(5)(D)(iii).

22 (b) No claim for payment may be presented by a health  
23 care provider or entity to any individual, payor, third party  
24 payor or other entity for a service furnished pursuant to a  
25 referral prohibited under this section.

1       Sec. 111.006.     EXCEPTIONS.     The provisions of Section  
2 111.005 shall not apply where the health care provider's  
3 investment interest is in registered securities purchased on a  
4 national exchange and issued by a publicly held corporation:

5       (1) whose shares are traded on a national exchange; and

6       (2) whose total assets at the end of the corporation's most  
7 recent fiscal quarter exceeded \$200 million.

8       Sec. 111.007.     ENFORCEMENT. (a) Any health care provider or  
9 entity that presents or causes to be presented a bill or a claim  
10 for service for a service for which payment may not be made  
11 under Section 111.005(b) shall be subject to a civil penalty of  
12 not more than \$15,000 for each such service to be imposed and  
13 collected by the licensing authority that regulates the health  
14 care provider or entity against whom the civil penalty is being  
15 imposed. All penalties collected hereunder shall be maintained  
16 in a segregated account by the licensing authority to be used in  
17 the enforcement of the provisions of this chapter. If there is  
18 no licensing authority that regulates the health care provider  
19 or entity against whom the civil penalty described herein should  
20 be imposed, the penalties collected hereunder shall be  
21 maintained in a segregated account by the Office of the Attorney  
22 General to be used in the enforcement of the provisions of this  
23 chapter and other statutes for protection of health care  
24 consumers.

1       (b) Any health care provider or entity that enters into an  
2 agreement or scheme, such as a cross-referral arrangement, which  
3 the health care provider or entity knows or should know has a  
4 material purpose of assuring referrals by the health care  
5 provider to a particular entity which, if the health care  
6 provider directly made referrals to such entity, would be in  
7 violation of this chapter, shall be subject to a civil penalty  
8 of not more than \$100,000 for each such circumvention  
9 arrangement or scheme to be imposed and collected by the  
10 licensing authority that regulates the health care provider or  
11 entity against whom the civil penalty is being imposed. All  
12 penalties collected hereunder shall be maintained in a  
13 segregated account by the licensing authority to be used in the  
14 enforcement of the provisions of this chapter. If there is no  
15 licensing authority that regulates the health care provider or  
16 entity against whom the civil penalty described herein should be  
17 imposed, the penalties collected hereunder shall be maintained  
18 in a segregated account by the Office of the Attorney General to  
19 be used in the enforcement of the provisions of this chapter and  
20 other statutes for protection of health care consumers.

21       (c) If a health care provider or entity collects any  
22 amount that was billed in violation of this chapter, the health  
23 care provider or entity shall refund such amount within 45 days



1 of receipt of payment to the payor, third party payor or  
2 patient, whichever is applicable.

3 (d) Notwithstanding the penalties or any other remedy  
4 contained in this chapter, the Attorney General may maintain an  
5 action for an injunction or other relief to enforce the  
6 provisions of this chapter.

7 (e) An action for an injunction or other relief to enforce  
8 the provisions of this chapter may be brought by the Attorney  
9 General in the name of the State and against the health care  
10 provider or other entity alleged to have violated a provision of  
11 this chapter to restrain such a violation by temporary  
12 restraining order, temporary injunction, or permanent  
13 injunction.

14 (f) An action brought under this section may be commenced  
15 in the district court of the county in which the health care  
16 provider or entity against whom it is brought resides, has its  
17 principal place of business or has done business, or in the  
18 district court of the county where the transaction occurred, or,  
19 on the consent of the parties, in a district court of Travis  
20 County. The court may issue temporary orders and temporary or  
21 permanent injunctions to restrain and prevent violations of this  
22 chapter and such injunctive relief shall be issued without bond.

23 (g) In addition to the request for a temporary restraining  
24 order or permanent injunction in a proceeding brought under this

1 section, the Attorney General may request, and the trier of fact  
2 may award, the civil penalties to be paid to the State as  
3 contained in this section or as otherwise contained in this  
4 chapter.

5 (h) The court may make such additional orders or judgments  
6 as are necessary to compensate a payor, third party payor or  
7 patient as contained in this section.

8 (i) Any person who violates the terms of an injunction  
9 under this section shall forfeit and pay to the State a civil  
10 penalty of not more than \$10,000 per violation, not to exceed a  
11 total of \$50,000. For the purposes of this section, the  
12 district court issuing the injunction shall retain jurisdiction  
13 and the cause shall be continued and in these cases the Attorney  
14 General, acting in the name of the State, may petition for  
15 recovery of civil penalties under this section. All penalties  
16 collected hereunder shall be maintained in a segregated account  
17 by the licensing authority that regulates the person against  
18 whom the civil penalty is being imposed to be used in the  
19 enforcement of the provisions of this chapter. If there is no  
20 licensing authority that regulates the health care provider or  
21 entity against whom the civil penalty described herein should be  
22 imposed, the penalties collected hereunder shall be maintained  
23 in a segregated account by the Office of the Attorney General to

1 be used in the enforcement of the provisions of this chapter and  
2 other statutes for protection of health care consumers.

3 (j) In bringing an action under this section, the Attorney  
4 General acts in the name of the State and does not establish an  
5 attorney-client relationship with another person, including a  
6 third party payor or patient.

7 (k) A payor, third party payor or another health care  
8 provider may maintain an action against a health care provider  
9 or other entity that violates a provision of this chapter.

10 (l) In a suit filed under this section, a payor or third  
11 party payor may obtain:

12 (1) The amount of money paid by the payor or third  
13 party payor to the health care provider for a service furnished  
14 pursuant to a referral prohibited by this chapter. If the trier  
15 of fact finds that the conduct of the defendant was committed  
16 knowingly, the payor or third party payor may also recover an  
17 award of not more than three times the amount of the payment;

18 (2) An order enjoining a violation of this chapter;

19 (3) All orders necessary to restore to the payor or  
20 third party payor all sums of money which were acquired by the  
21 health care provider in violation of this chapter; and

22 (4) Any other relief which the court deems proper.

23 (m) In a suit filed under this section a health care  
24 provider may obtain:

1           (1)    An order enjoining a violation of this chapter;  
2    and

3           (2)    Any other relief which the court deems proper.

4           (n)    Each payor, third party payor or health care provider  
5    filing an action under this section and who prevails in that  
6    action under this section shall be awarded court costs and  
7    reasonable and necessary attorney's fees.

8           (o)    The court, on a showing of good cause, may allow the  
9    Attorney General, as a representative of the public, to  
10   intervene in the action to which this section applies. The  
11   Attorney General shall file its motion for intervention with the  
12   court before which the action is pending and serve a copy of the  
13   motion on each party to the action.

14          Sec. 111.008.   LIMITATION ON FILING SUIT.   (a)   An action  
15   under Section 111.007 must be brought within four years after  
16   the date on which a violation of a provision of this chapter has  
17   occurred.

18          (b)    Not later than the 61st day before the date a payor,  
19   third party payor or health care provider files an action under  
20   Section 111.007, the payor, third party payor or health care  
21   provider shall give the health care provider written notice of  
22   its intention to maintain the action, stating in reasonable  
23   detail the nature of the alleged violation.

1 (c) A health care provider who receives a notice under  
2 this section may correct the violation as provided by Section  
3 111.009 during the period beginning on the date the notice is  
4 received and ending on the 60th day after that date. A health  
5 care provider who corrects a violation as provided in Section  
6 111.009 is not liable to a payor or third party payor for the  
7 violation.

8 Sec. 111.009. EXCEPTION FROM LIABILITY. A health care  
9 provider is not liable to a payor or third party payor for a  
10 violation of this chapter if, prior to or during the 60-day  
11 period of time following its receipt of the notice described in  
12 Section 111.008, the health care provider pays to all payors and  
13 third party payors the amount of money paid by all payors and  
14 third party payors to the health care provider for a service  
15 furnished pursuant to a referral prohibited by this chapter.

16 Sec. 111.010. DISCIPLINARY ACTION. A violation of this  
17 chapter by a health care provider shall constitute grounds for  
18 disciplinary action to be taken by the licensing authority that  
19 regulates the health care provider pursuant to Occupations Code,  
20 Title 3, Subtitles B and C.

21 SECTION 2. EFFECTIVE DATE. (a) This Act takes effect on  
22 September 1, 2005.

23 (b) This Act applies to patient referrals for designated  
24 health services that are provided on or after September 1, 2006.

S.D. No. 1241

By Madla

**A BILL TO BE ENTITLED**

**AN ACT:**

relating to financial arrangements between referring health care providers and providers of designated health services in rural areas; providing penalties.

MAR 09 2005

Filed with the Secretary of the Senate

MAR 21 2005

Read and referred to Committee on HEALTH & HUMAN SERVICES

Reported favorably \_\_\_\_\_

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Read second time, \_\_\_\_\_, and ordered engrossed by: { unanimous consent  
a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Senate and Constitutional 3 Day Rule suspended by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

Read third time, \_\_\_\_\_, and passed by: { A viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_  
SECRETARY OF THE SENATE

**OTHER ACTION:**

\_\_\_\_\_  
Engrossed

\_\_\_\_\_  
Sent to House

Engrossing Clerk \_\_\_\_\_

\_\_\_\_\_  
Received from the Senate

\_\_\_\_\_  
Read first time and referred to Committee on \_\_\_\_\_

\_\_\_\_\_  
Reported \_\_\_\_\_ favorably (as amended) (as substituted)

\_\_\_\_\_  
Sent to Committee on (Calendars) (Local & Consent Calendars)

\_\_\_\_\_  
Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_  
Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting.

\_\_\_\_\_  
Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_  
Returned to Senate.

\_\_\_\_\_  
Returned from House without amendment.

\_\_\_\_\_  
Returned from House with \_\_\_\_\_ amendments.

\_\_\_\_\_  
Concurred in House amendments by a viva voce vote \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_  
CHIEF CLERK OF THE HOUSE

\_\_\_\_\_ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

\_\_\_\_\_ Senate conferees instructed.

\_\_\_\_\_ Senate conferees appointed: \_\_\_\_\_, Chairman; \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

\_\_\_\_\_ House granted Senate request. House conferees appointed: \_\_\_\_\_, Chairman;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ Conference Committee Report read and filed with the Secretary of the Senate.

\_\_\_\_\_ Conference Committee Report adopted on the part of the House by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

**OTHER ACTION:**

\_\_\_\_\_ Recommitted to Conference Committee

\_\_\_\_\_ Conferees discharged.

\_\_\_\_\_ Conference Committee Report failed of adoption by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays